

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEONARD CARTER,

Plaintiff,

v.

UNIVERSITY OF WASHINGTON
SCHOOL OF DENTISTRY, et al.,

Defendants.

CASE NO. C21-0401JLR

ORDER DISMISSING
COMPLAINT AND DENYING
MOTION TO APPOINT
COUNSEL

I. INTRODUCTION

Before the court is *pro se* Plaintiff Leonard Carter's amended complaint against the University of Washington School of Dentistry (the "School of Dentistry"), Brett Meier, and Danielle Plousard (collectively, "Defendants") (Am. Compl. (Dkt. # 9)) and motion to appoint counsel (Mot. (Dkt. # 6)). Mr. Carter is proceeding *in forma pauperis* in this action. (See IFP Order (Dkt. # 4).) Under 28 U.S.C. § 1915(e), courts have authority to review complaints filed by plaintiffs who are proceeding *in forma pauperis*

1 and must dismiss them if, “at any time,” a complaint is determined to be frivolous,
2 malicious, fails to state a claim on which relief may be granted, or seeks monetary relief
3 from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). As discussed
4 below, Mr. Carter’s amended complaint falls within the category of pleadings that fail to
5 state a claim. Accordingly, the court DISMISSES Mr. Carter’s amended complaint with
6 prejudice and DENIES Mr. Carter’s motion to appoint counsel as moot.

7 **II. BACKGROUND**

8 The court set forth the background of Mr. Carter’s complaint in its March 26, 2021
9 order dismissing Mr. Carter’s complaint with leave to amend under 28 U.S.C.
10 § 1915(e)(2). (3/26/21 Order (Dkt. # 7).) On April 9, 2021, Mr. Carter filed an amended
11 complaint pursuant to the court’s order. (*See Am. Compl.*) As he did in his initial
12 complaint, Mr. Carter alleges that the School of Dentistry, its patient relations director
13 Mr. Meier, and dentistry student Ms. Plousard denied him dental services on the basis of
14 his race. (*See generally id.*)

15 **III. ANALYSIS**

16 Title 28 U.S.C. § 1915(e)(2)(B) authorizes a district court to dismiss a claim filed
17 IFP “at any time” if it determines: (1) the action is frivolous or malicious; (2) the action
18 fails to state a claim; or (3) the action seeks relief from a defendant who is immune from
19 such relief. *See* 28 U.S.C. § 1915(e)(2)(B). Section 1915(e)(2) parallels the language of
20 Federal Rules of Civil Procedure 12(b)(6). *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th
21 Cir. 2000). The complaint therefore must allege facts that plausibly establish the
22 defendant’s liability. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007).

1 Because Mr. Carter is a *pro se* plaintiff, the court must construe his pleadings liberally.
2 *See McGuckin v. Smith*, 974 F.2d 1050, 1055 (9th Cir. 1992). But even liberally
3 construed, Mr. Carter’s amended complaint has not remedied the deficiencies identified
4 in the court’s March 26, 2021 order and thus still fails to plausibly establish the
5 Defendants’ liability or raise his “right to relief above the speculative level.” *See*
6 *Twombly*, 550 U.S. at 555.

7 As a threshold matter, Mr. Carter’s amended complaint does not establish that this
8 court has subject matter jurisdiction. Mr. Carter’s complaint again alleges only state-law
9 claims. (*See* Am. Compl. at 7 (citing three Washington statutes).) Thus, Mr. Carter does
10 not allege a basis for this court’s federal question jurisdiction over this case. *See* 28
11 U.S.C. § 1331 (giving federal courts jurisdiction over cases “arising under” federal law).
12 And, again, because Mr. Carter and all Defendants are citizens of Washington, this court
13 does not have diversity jurisdiction over this case. (*See* Am. Compl. at 1-2); *see* 28
14 U.S.C. § 1332 (giving federal courts jurisdiction over civil cases where the amount in
15 controversy is greater than \$75,000 and where the dispute is between citizens of different
16 states). As a result, the court must dismiss this case for lack of subject matter
17 jurisdiction.

18 Further, even if the court were to liberally construe Mr. Carter’s amended
19 complaint as asserting a federal claim for discrimination in public accommodations under
20 Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a—which would support federal
21 question jurisdiction over this case—Mr. Carter’s amended complaint does not plausibly
22 establish Defendants’ liability. First, the enforcement provision of Title II contains a

1 notice requirement, which prohibits a plaintiff from bringing a civil action “before the
2 expiration of thirty days after written notice of such alleged act or practice has been given
3 to the appropriate State or local authority,” if such state has a law “prohibiting such act or
4 practice and establishing or authorizing a State or local authority to grant or seek relief
5 from such practice.” 42 U.S.C. § 2000a-3(c). Washington has a law prohibiting
6 discrimination based on race in places of public accommodation, and the Washington
7 Human Rights Commission (“HRC”) has authority to grant relief from such
8 discrimination. *See* RCW 49.60.030(1)(b); RCW 49.60.120(4); RCW 49.60.215(1);
9 RCW 49.60.230. Because there is a state law prohibiting racial discrimination in places
10 of public accommodation and an agency authorized to grant relief for such conduct, a
11 plaintiff bringing a civil action for a Title II claim of racial discrimination in Washington
12 must first file written notice with the HRC at least thirty days before bringing any action
13 in federal court. *See Ramirez v. Hart*, No. C13-5873RJB, 2014 WL 2170376, at *6
14 (W.D. Wash. May 23, 2014). As was the case in his original complaint, Mr. Carter has
15 not pleaded in his amended complaint that he filed written notice with the HRC at least
16 thirty days before filing suit. (*See generally* Am. Compl.) As a result, his claim is barred
17 by 42 U.S.C. § 2000a-3(c).

18 In addition, damages are not available for violations of Title II. *See Pickern v.*
19 *Holiday Quality Foods, Inc.*, 293 F.3d 1133, 1136 (9th Cir. 2002) (citing *Newman v.*
20 *Piggie Park Enters., Inc.*, 390 U.S. 400, 402 (1968)). Rather, the sole private remedy is
21 an injunction under 42 U.S.C. § 2000a-3. *See id.* Thus, because Mr. Carter again seeks
22 only damages as a remedy for Defendants’ alleged discrimination, he cannot recover the

1 relief he seeks under Title II. (*See* Am. Compl. at 8 (seeking damages of five million
2 dollars).)

3 Finally, as with his initial complaint, Mr. Carter's claims are barred by the statute
4 of limitations for a Title II claim. Because Title II does not specify a time limit for
5 bringing an action, courts look to the state statute of limitations for personal injury
6 actions. *See* 42 U.S.C. § 2000a-3; *see also* *Soto v. Sweetman*, 882 F.3d 865, 871 (9th Cir.
7 2018) (noting that because 42 U.S.C. § 1983 does not specify a statute of limitations,
8 courts borrow the statute of limitations for state-law personal injury claims).
9 Washington's statute of limitations for personal injury claims is three years. *See* RCW
10 4.16.080(1). Here, the actions that form the basis of Mr. Carter's claims date from March
11 and November 2017—more than three years before the March 24, 2021 filing date of his
12 complaint. (*See* Compl. (Dkt. # 5); *see also* Am. Compl. at 6 (stating that the allegedly
13 discriminatory actions took place on March 3, 2017, and November 30, 2017).) Mr.
14 Carter again does not allege any discriminatory actions that occurred within three years
15 of the filing of this action. (*See generally* Am. Compl.) As a result, Mr. Carter's Title II
16 claims based on Defendants' 2017 conduct are barred by the statute of limitations.

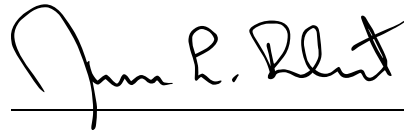
17 The court informed Mr. Carter in its March 26, 2021 order that if his amended
18 complaint did not correct the identified deficiencies, the court would dismiss the
19 amended complaint with prejudice and without leave to amend. (*See* 3/26/21 Order at 6.)
20 Because Mr. Carter has not addressed those deficiencies, the court concludes that Mr.
21 Carter's amended complaint fails to state a claim against Defendants; dismisses the
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1 amended complaint with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B); and denies Mr.
2 Carter's motion to appoint counsel as moot.

3 **III. CONCLUSION**

4 For the foregoing reasons, the court DISMISSES Mr. Carter's amended complaint
5 (Dkt. # 9) for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B) and DENIES
6 Mr. Carter's motion to appoint counsel (Dkt. # 6) as moot.

7 Dated this 9th day of April, 2021.

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10 JAMES L. ROBERT
United States District Judge
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